

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL ORDER NO. R5-2008-0135

ADMINISTRATIVE CIVIL LIABILITY ORDER
IN THE MATTER OF

ROBERT L. FRENCH

CIRCLE A GAS STATION
1215 EAST 22ND STREET
MARYSVILLE, YUBA COUNTY

This Order is issued to Robert L. French pursuant to California Water Code (CWC) section 13350, which authorizes the imposition of Administrative Civil Liability (ACL). This Order is based on findings that Robert L. French violated provisions of Cleanup and Abatement Order (CAO) No. R5-2006-0722.

The California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) finds, with respect to the Discharger's acts, or failure to act, the following:

DISCHARGER LIABILITY

1. On 20 November 2006, the Executive Officer of the Regional Water Board issued Cleanup and Abatement Order (CAO) No. R5-2006-0722 to Robert L. French and Stockton Marketing Inc., which required the investigation and cleanup of a release of petroleum hydrocarbon constituents. The release, which was first reported in July 1997, occurred from one or more underground storage tanks (USTs) at Circle A Gas Station, a gasoline service station located at 1215 East 22nd Street, Marysville, Yuba County, California (Site).
2. An unauthorized release form was not filed by Robert L. French or any other responsible party upon discovery of the release as required by CWC section 13272. When one was eventually submitted by Yuba County in December 2003, a release discovery date was not included, but it is noted that the release was discovered during a tank removal (i.e., during July 1997). The July 1997 release date has been verbally confirmed with the former Yuba County staff person who submitted the unauthorized release form.
3. Robert L. French and Stockton Marketing, Inc. were identified as responsible parties in the CAO. In accordance with California Code of Regulations, title 23, section 2720, which defines responsible parties as including, "...[a]ny owner of property where an unauthorized release of a hazardous substance from an underground storage tank has occurred...", Robert L. French is a responsible party because he owned the property at the time petroleum hydrocarbons were discharged/released and because he is the current owner of the property. Therefore, Robert L. French is named in this Order.
4. Stockton Marketing, Inc. was a Delaware corporation doing business in California, and is registered with the California Secretary of State. Stockton Marketing, Inc. has a "forfeited" business license status, and Robert L. French is the listed Agent for Service of Process. In accordance with California Code of Regulations, title 23, section 2720, which defines

responsible parties as including, "...[any] person who owned or operated the underground storage tank immediately before the discontinuation of its use..." Stockton Marketing Inc. may be named as a responsible party because it owned and operated the UST system during the time petroleum hydrocarbons were discharged. However, due to Stockton Marketing, Inc.'s forfeited business license, it is not named in this Order.

5. The commercial enterprise, but not the property upon which it operates, was sold to Singh Kaile in 2001 and remains an operating vehicle fueling station called Circle A. The Regional Water Board does not currently possess evidence that a release from the current fueling system has occurred during Mr. Kaile's ownership of the business. Therefore, Mr. Kaile is not named in this Order.
6. CWC section 13320 allows any aggrieved person to petition the State Water Resources Control Board (State Water Board) to review an action taken by a Regional Water Board within 30 days of that action. Neither Robert L. French nor Stockton Marketing Inc. filed a challenge to CAO No. R5-2006-0722 with the State Water Board. Although Robert L. French claims that the CAO was issued to him in error, neither he nor Stockton Marketing Inc. has submitted any information to the Regional Water Board that contradicts the Regional Water Board's understanding that Robert L. French owned the Site at the time of the release and has therefore appropriately been named a responsible party.

BACKGROUND

7. On 2 July 1997, three 8,000 gallon USTs containing three grades of unleaded gasoline were excavated and removed from a common basin in the southeast portion of the Site. An approximately ½ -inch diameter hole was visible along a seam near the bottom of one of the tanks. The UST basin was over-excavated at this time to remove impacted soil identified during the removal. Seven soil samples were collected from the limits of the UST excavation at depths ranging from 13 to 22 feet below ground surface. Analytical results of these soil samples demonstrated that the soils were impacted by petroleum releases from the tank(s). Methyl tertiary butyl ether (MtBE) and lead were detected in all soil samples at maximum concentrations of 9,800 ug/kg and 19,000 ug/kg, respectively. Total petroleum hydrocarbons as gasoline (TPH-g), MtBE, and benzene, toluene, ethylbenzene, and total xylenes (BTEX) were detected in two samples collected at a sampling depth of 22 feet. The samples had contamination concentrations high enough to suggest groundwater may have been impacted. Further excavation to remove these elevated concentrations of petroleum constituents was not conducted and no groundwater monitoring wells were installed at this time. An unauthorized release form was not filed at the time of the July 1997 release.
8. Because samples taken after the completion of the overexcavation showed that the extent of contamination remained undefined, and because the release had not been adequately remediated, the Yuba County Office of Emergency Services issued a letter to Stockton Marketing, Inc. on 9 July 1997 requesting that a work plan for a subsurface investigation be submitted by 1 October 1997. The requested work plan was not submitted.

9. On 30 December 2003, the Yuba County Office of Emergency Services issued a letter to Robert L. French of Stockton Marketing, Inc. requesting a work plan for a subsurface investigation that was to include, at a minimum, soil borings to define the vertical and horizontal extent of contamination and the installation of monitoring wells. This work plan was to be submitted by 16 February 2004. Robert L. French responded to this request on 5 January 2004, stating that when the USTs were removed in 1997, there was only soil pollution and that the impacted soil had been removed. Robert L. French also stated that if the USTs had a leak in December (2003), then Mr. Kaile was responsible. Neither Robert L. French nor Stockton Marketing, Inc. submitted the requested work plan.
10. On 30 December 2003, the Yuba County Office of Emergency Services submitted an Unauthorized Release (Leak)/Contamination Site Report naming Robert L. French as the responsible party. This Unauthorized Release Report is included as Attachment One, a part of this Order.
11. During a Phase II investigation for a property transfer (report dated 23 January 2004), three groundwater samples were obtained from each of three soil borings. Two soil samples at depths of 13.5 and 15 feet were obtained from two of the soil borings. Petroleum compounds were not detected in the soil borings, but MtBE was detected at 2,100 ug/l in one of the three groundwater samples, thus confirming that groundwater has been impacted by petroleum hydrocarbons from the former UST system. Groundwater monitoring wells were not installed at this time.
12. On 28 January 2004, the Yuba County Office of Emergency Services issued a letter to Robert L. French of Stockton Marketing, Inc. requesting a work plan for the subsurface investigation for the Site. The work plan was to be submitted by 15 March 2004, and was to include soil borings and the installation of groundwater monitoring wells. This work plan was not submitted.
13. After the requested work plan was not submitted on 15 March 2004, Yuba County Office of Emergency Services referred the case to the Regional Water Board.
14. On 24 May 2004, Regional Water Board staff reviewed the file on the Site and issued a letter to Robert L. French that once again requested a subsurface investigation work plan, and also requested that Robert L. French complete a sensitive receptor survey within 2,000 feet of the Site boundary. This work was to have been completed by 30 July 2004. To date, the work has not been completed.
15. On 12 October 2005, the Regional Water Board issued a second letter to Robert L. French and Stockton Marketing, Inc. that requested the submittal of a work plan by 16 December 2005. The work plan was to include a proposal to advance a sufficient number of soil borings to complete the horizontal and vertical delineation of the identified hydrocarbon release. The work plan was also to include a proposal for the installation of at least three groundwater monitoring wells to determine concentrations of petroleum hydrocarbons in

the groundwater and to determine groundwater flow directions. To date the requested work plan has not been received by the Regional Water Board.

16. On 1 February 2006, the Regional Water Board staff issued a third request letter to Robert L. French and Stockton Marketing, Inc. stating that the requested work plan had not been received and that Robert L. French had failed to comply with staff directives. The letter requested that Robert L. French submit the work plan by 10 March 2006. To date the requested work plan has not been received by the Regional Water Board.
17. The Regional Water Board Executive Officer issued Cleanup and Abatement Order No. R5-2006-0722 on 20 November 2006 to Robert L. French and Stockton Marketing, Inc. The CAO required, among other things, that the responsible parties conduct a subsurface investigation due to the release of petroleum hydrocarbons.
18. A Notice of Violation (NOV) letter was mailed to Robert L. French on 30 January 2007 because Robert L. French and Stockton Marketing, Inc. failed to submit a site history report and a site investigation *Workplan* as required in CAO No. R5-2006-0722. In a 4 February 2007 response to the NOV letter, Robert L. French stated his belief that he is not a responsible party for the purposes of site investigation and/or cleanup.
19. On 25 March 2007, Robert L. French submitted a letter with a history of the Site and UST owners. The letter also included discussions concerning his view on legal and contractual responsibilities of various parties who either owned or operated the Site. Robert L. French summarized the letter with the following points:
 - a. He, Robert L. French, is not responsible for any actions by Stockton Marketing, Inc. because they are a corporation and a separate legal being;
 - b. He never operated the USTs and, therefore, has never been a primarily responsible person;
 - c. Per the terms of his lease agreement with Mr. Kaile, Mr. Kaile is the responsible person for any and all cleanup;
 - d. Per the lease agreement, he does not have possession of the property and has no way to access the property for the cleanup; and
 - e. We would need to find Mr. Kaile to be the responsible party so he could require Mr. Kaile to act.

The letter did not include a *Workplan* and therefore did not comply with the requirements of CAO No. R5-2006-0722. Robert L. French did not produce any argument that would contradict the Regional Water Board's assertion that Robert L. French owned the Site at the time of the release and is appropriately named a responsible party.

20. Regional Water Board staff met with Robert L. French on 19 April 2007 in an attempt to get the site investigation started. Robert L. French agreed to meet with Mr. Kaile, the current tenant of the Site, to discuss site access issues and the possibility of reassignment of cleanup fund eligibility. A due date of 24 May 2007 was set for confirmation of the meeting and 24 May 2007 was also the deadline for submittal of the *Workplan* and for submittal of

a schedule to comply with the Order. Neither the *Workplan* or schedule for compliance has been received.

21. In a letter dated 14 August 2007, State Water Board staff notified Robert L. French that the State Water Board had been authorized to provide funds from the State Emergency, Abandoned and Recalcitrant (EAR) Account to the Regional Water Board for direct site cleanup. Funds from the EAR account are made available to Regional Water Boards and local agencies to undertake site cleanup when a tank owner or operator fails or refuses to take the required corrective action. The Site qualified for EAR funding due to the violations of the CAO. This letter also notified Robert L. French that the State Water Board is authorized to recover any costs expended from the EAR account from any responsible party, and explained that once EAR Account funds are expended, owners and operators of USTs lose their eligibility to participate in the UST Cleanup Fund Program.
22. In a letter dated 27 November 2007, Regional Water Board staff requested a meeting with Robert L. French to discuss compliance with CAO No. R5-2006-0722. Robert L. French stated in a 8 January 2008 phone call that he never received this letter and would be leaving the country on 2 February 2008 for a period of four weeks, and therefore, any meeting would have to occur before then or after he returned. Regional Water Board staff e-mailed the 27 November 2007 letter to Robert L. French on both 8 and 9 January 2008 requesting a meeting on either 16 or 17 January 2008, days that Robert L. French stated that he would be available.
23. In a "Final Request" letter dated 12 December 2007, the State Water Board notified Robert L. French and Stockton Marketing, Inc. that additional information was required to process their eligibility for the UST Cleanup Fund and that failure to respond to the request within 30 days would result in an ineligibility determination. In a telephone call with Regional Water Board staff on 23 January 2008, State Water Board staff indicated that the requested information had not yet been received. Regional Water Board staff contacted State Water Board UST Cleanup Fund staff and requested a further grace period for Robert L. French and Stockton Marketing, Inc. to submit the requested information. The grace period passed without any responsible party submitting additional information.
24. On 14 January 2008, Robert L. French sent an e-mail stating that something came up unexpectedly and he would not be available until 30 or 31 January, or 1 February. Regional Water Board staff replied by e-mail the next morning with the following points:
 - a. The release of petroleum hydrocarbons to the subsurface from the Circle A Gas Station was first reported more than a decade ago and an investigation has not yet begun.
 - b. The *Workplan* required in the CAO is more than one year overdue and, due to the lack of progress in conducting an investigation at the Site, the Regional Water Board's next step would be to recommend additional enforcement actions to our management, which may include an Administrative Civil Liability (ACL) or referral to the Attorney General.

- c. The Regional Water Board staff would consider the submittal of the *Workplan* on or before 2 February 2008, which would include a schedule to complete the work and submittal of an investigation report by 2 May 2008, to be a good faith effort on Robert L. French's part to comply with the requirements of the CAO. Otherwise, the Regional Water Board staff would continue to consider this a recalcitrant site and would proceed accordingly.
- d. Regional Water Board staff would be available to meet on January 30 at 10 AM, but since this date was so close to Robert L. French's departure date, Regional Water Board staff anticipated that Robert L. French would have the *Workplan* available at the meeting so that the proposed investigation could be discussed.

25. Robert L. French replied in a 3 February 2008 e-mail, which stated, in part:

"I have said from the start that your [O]rder (i.e., CAO No. R5-2006-0722) to me in this regard was in error. The details of my claim in this regard are spelled out in detail in the previous letters that I have sent to the file. Now, the clean up fund seems to agree with my position, (that you are incorrect) and that is causing a delay in getting the fund to make a commitment."

Robert L. French again replied in a 6 February 2008 e-mail stating in part:

"The tank hole, all pipeways, etc. was completely (sic) cleaned and tested by Apex to the Counties (sic) satisfaction. This is why there are no "follow up letters" from the county from 1997 onward. We received a complete release from the County. I suspect that they were not all that active in documenting what was done, but most of our business was done by phone, and on site inspection," and "The bottom line is that Stockton Marketing Inc. cleaned up the subject property completely, and received a release from the County to that effect. This is why there was no follow up from the time period of 1997 until the time that new holes were drilled in 2003. There was nothing to follow up on."

- 26. In an e-mail dated 7 February 2008, which was updated with more recent information and resent on 28 February 2008, Regional Water Board staff informed Robert L. French that information in the Regional Water Board and Yuba County files indicated that the release from 1997 had not been cleaned up and that the case was not closed. Robert L. French was informed that this information was confirmed with former Yuba County staff who had been responsible for oversight of this case while Yuba County was the lead regulatory agency. To date, Robert L. French has not responded to these e-mails nor has he submitted any documentation to support his claims that the Site was remediated in 1997.
- 27. In a letter to Robert L. French dated 17 March 2008 that responded to Robert L. French's request for a review of the case, Regional Water Board staff reiterated that Robert L. French was properly named a responsible party in CAO No. R5-2006-0722 and that the responsible parties are in continuing violation of the CAO. The letter also stated that staff would recommend enforcement if the site investigation *Workplan* was not submitted by 4 April 2008 or if a written commitment to provide a work plan by 2 May 2008

was not received by 4 April 2008. To date, Robert L. French has provided neither the required *Workplan* nor a commitment to supply the *Workplan*.

28. To date, Robert L. French has failed to comply with staff requests to define the extent and severity of the petroleum hydrocarbon release, which has impacted groundwater and remains an unquantified threat to groundwater resources.
29. In 2007, the Regional Water Board was allocated \$200,000 from the Emergency, Abandoned, and Recalcitrant (EAR) Account, a sub-account of the State Water Board's Underground Storage Tank Cleanup Fund, to initiate investigation in compliance with CAO No. R5-2006-0722. Regional Water Board and State Water Board staff time will be required to oversee work funded by the EAR Account.
30. Robert L. French may still be eligible for grant funds from the UST Cleanup Fund to complete investigation and cleanup of the unauthorized release. The UST Cleanup Fund may contribute up to \$1,495,000 for the ordered work. Regional Water Board staff has offered to assist Robert L. French in applying for grant funds from the account, but these offers have been rejected.

VIOLATIONS OF CLEANUP AND ABATEMENT ORDER NO. R5-2006-0722

31. To date, Robert L. French has not complied with CAO No. R5-2006-0722 or any previous Regional Water Board or Yuba County staff directives. By failing to comply with the CAO and by failing to initiate a subsurface investigation, Robert L. French has created the need for the Regional Water Board to seek emergency funds through the EAR account to investigate the extent of petroleum hydrocarbon constituents beneath the Site. As of 31 December 2007, only one of the six reports required by the CAO has been submitted.
32. Robert L. French has failed to perform the following tasks required in CAO No. R5-2006-0722:
 - CAO No. R5-2006-0722, Order 4, required Robert L. French to: "**By 15 January 2007, submit a Site Investigation Workplan (Workplan) to collect a sufficient number of soil, soil vapor and groundwater samples to determine the lateral and vertical extent of waste constituents and the complete site characterization.**" Robert L. French has not submitted the *Workplan*.
 - CAO No. R5-2006-0722, Order 5, required Robert L. French to: "**Within 30 days of staff concurrence with the Workplan, but no later than 28 February 2007, implement the workplan.**" Robert L. French has not implemented a *Workplan*.
 - CAO No. R5-2006-0722, Order 6, required Robert L. French to: "**Submit results of the site investigation in a Preliminary Investigation and Evaluation Report (PIER) no later than 30 April 2007.**" The PIER was to include recommendations and, if needed, a second work plan for additional investigation. If additional investigation

was necessary, the second work plan was to include a time schedule for completing the work and submitting the results. Robert L. French has not submitted the PIER.

- CAO No. R5-2006-0722, Order 8, required Robert L. French to: *"Upon defining the extent of wastes, but no later than **15 August 2007**, submit a Problem Assessment Report (PAR) which includes information from the implementation of the Workplan and sufficient detail on the nature and extent of the release to provide a basis for future decisions regarding subsequent cleanup and abatement actions."* Robert L. French has not submitted the PAR.
- CAO No. R5-2006-0722, Order 9, required Robert L. French to: *"By **30 September 2007**, submit a Feasibility Study that provides a summary of remedial alternatives evaluated to address applicable cleanup levels for the affected or threatened human health and/or waters of the State."* Robert L. French has not submitted the Feasibility Study.
- CAO No. R5-2006-0722, Order 15, required Robert L. French to: *"By **15 May 2007**, submit a risk assessment to demonstrate whether the contamination poses unacceptable risks to human health or the environment. The site-specific risk assessment must use the Office of Environmental Health Hazard Assessment (OEHHA) toxicity data (California cancer slopes)."* Robert L. French has not submitted the required risk assessment.
- CAO No. R5-2006-0722, Order 16, required Robert L. French to: *"By **31 July 2007**, submit a Public Participation Plan to solicit the public's concerns and disseminate information to the public regarding the investigation and proposed cleanup activities at the sites."* Robert L. French has not submitted a Public Participation Plan.

33. Robert L. French failed to comply with the requirements of the deadline extensions and has benefited financially from the delays.
34. On 30 January 2007, Regional Water Board staff issued a Notice of Violation (NOV) notifying Robert L. French that he was in violation of Order Nos. 3 and 4 of CAO No. R5-2006-0722, which required Robert L. French to submit a site history report and the *Workplan*. The NOV contained a due date of 26 February 2007 for the two reports and stated that Regional Water Board staff may recommend additional enforcement action, including the assessment of administrative civil liability and/or referral to the Attorney General, if the reports were not received by this date.
35. On 17 March 2008, Regional Water Board staff sent Robert L. French a letter indicating that the responsible parties are in continuing violation of CAO No. R5-2006-0722 and that staff had recommended additional enforcement action, including the assessment of administrative civil liability and/or referral to the Attorney General, to Regional Water Board management but would ask management to reconsider if the responsible parties made a

good faith effort to comply with the CAO. A good faith effort was defined as compliance with Required Action 4 of CAO No. R5-2006-0722 (i.e., submit the *Workplan*) by 4 April 2008, or by providing the Regional Water Board a written commitment via certified mail by 4 April 2008 to submit the *Workplan* by 2 May 2008. Robert L. French met neither of these conditions and therefore did not provide a good faith effort toward compliance with the CAO.

36. In violation of CAO No. R5-2006-0722, Robert L. French has failed to and continues to fail to characterize the lateral and vertical extent of petroleum hydrocarbon impacts to groundwater, and has failed to and continues to fail to implement corrective action measures.

REGULATORY CONSIDERATIONS

37. By the acts and omissions cited above, Robert L. French has violated CAO No. R5-2006-0722, issued pursuant to CWC section 13304. CWC section 13304(a) states, in part:

“Any person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.”

38. California Health and Safety Code section 25299.54(d) states:

“An owner or operator who violates Section 25296.10 or a corrective action order, directive, notification, or approval order issued pursuant to this chapter, Chapter 6.7 (commencing with Section 25280), or Division 7 (commencing with Section 13000) of the Water Code, is liable for a corrective action cost that results from the owner's or operator's violation and is ineligible to file a [UST Cleanup Fund] claim pursuant to this section.”

39. CWC section 13304(c)(1) states, in part:

“If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that governmental agency to the extent of the reasonable

costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action."

40. CWC section 13350(a) states:

"Any person who (1) violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited in or on any waters of the state, or (3) causes or permits any oil or any residual product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e)."

41. CWC section 13350(e) states, in part:

"The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs...[¶]. the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs."

42. As described in Finding 32, Robert L. French is in violation of numerous terms of CAO No. R5-2006-0722. As of 30 June 2008, Robert L. French has accrued, and is continuing to accrue, penalties for the following violations:

- a. Order No. 4, Submittal of the *Workplan*: 531 days late;
- b. Order No. 5, Implement the *Workplan*: 487 days late;
- c. Order No. 6, Submittal of the *PIER*: 426 days late;
- d. Order No. 15, Submittal of the risk assessment: 411 days late;
- e. Order No. 16, Submittal of the *Public Participation Plan*: 335 days late;
- f. Order No. 8, Submittal of the *PAR*: 320 days late;
- g. Order No. 9, Submittal of the *Feasibility Study*: 274 days late.

43. As of 30 June 2008, Robert L. French has accrued 2,784 days of violations for failing to perform separate and distinct required actions under CAO No. R5-2006-0722. Based on a statutory maximum penalty of \$5,000 per day per violation, the maximum liability for these 2,784 violations is thirteen million, nine hundred and twenty thousand dollars (\$13,920,000). Absent the Regional Water Board making express findings under CWC section 13350(f), the statutory minimum liability is two hundred seventy-eight thousand

four hundred dollars (\$278,400), calculated at \$100.00 per day per violation, multiplied by 2,784 days of violations.

44. CWC section 13327 states:

"In determining the amount of civil liability, the regional board . . . shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require."

45. Consideration of Factors under CWC section 13327

- a. **Nature, Circumstances, and Extent** The Discharger has violated CAO No. R5-2006-0722 by not submitting technical reports or implementing required work plans as required by Orders 4, 5, 6, 8, 9, 15, and 16 of the CAO. The Discharger has failed to comply with staff requests and the CAO to define the extent and severity of the petroleum hydrocarbon release, which has impacted groundwater and remains an unquantified threat to groundwater resources.
- b. **Gravity and Toxicity** The Discharger has failed to and continues to fail to characterize the lateral and vertical extent of petroleum hydrocarbon impacts to groundwater, and have failed to and continues to fail to implement corrective action measures. Both private well owners and municipal drinking water systems use the impacted aquifer for drinking water purposes within Marysville. However, a sensitive receptor survey has not been submitted as required in the CAO. The degree of toxicity from the discharge is currently unknown.
- c. **Susceptibility of the Discharge to Cleanup and Abatement** After being released into the subsurface, petroleum hydrocarbons migrate downward and laterally in soil until the release is immobilized (e.g., by an impermeable geologic layer or the water table). Once the petroleum hydrocarbons reach the water table, they pool at the top of the capillary fringe, slowly dissolving into the aquifer. While the technology to remove petroleum hydrocarbons from soil and groundwater exists and is in common use, the cleanups are expensive and typically take years to complete. In this case, the Discharger should have been eligible to be reimbursed for cleanup costs by the SWRCB's UST Cleanup Fund.
- d. **Ability to Pay** Staff is not aware of any reason why the Discharger is unable to pay the liability.
- e. **Prior History of Violations** The Discharger has received a Notice of Violation for not complying with the CAO and is in continuing violation of the CAO.
- f. **Degree of Culpability** The Discharger is and has been aware of staff requests and the CAO for technical reports and a subsurface investigation for more than ten years but has ignored the requests and CAO. It appears that the Discharger does not

intend to comply and has stated that the unauthorized release is the fault of another party.

- g. **Economic Benefit or Savings Resulting from the Violation** This amount represents the amount of the deductible for the UST Cleanup Fund, which is \$5,000. However, it is likely that the Discharger's refusal to comply with staff requests and the CAO may eventually lead to an economic detriment for the Dischargers. This site should be eligible for cleanup funds and if the Discharger does not come into compliance, it is likely that the Discharger will no longer be eligible and that may cost the Dischargers several hundred thousand dollars.
 - h. **Other Matters as Justice May Require** Staff costs to generate and process the ACL Complaint are estimated to be \$13,000. We estimate that another 100 hours of work (\$13,000) will be needed to prepare the agenda material for the ACL Order and to prepare for the Regional Board presentation. Therefore, staff expects to expend 200 hours (\$26,000) to bring this matter to the Board.
46. State EAR Account funds have been approved but have not yet been expended. Once EAR funds are expended, the Site is no longer eligible for funds from the UST Cleanup Fund. Stockton Marketing, Inc. the owner and operator of the USTs at the time of the release, reportedly is no longer a viable entity, and Robert L. French, the property owner at the time of the release and a former officer of Stockton Marketing, Inc. denies responsibility for the release. Unless Robert L. French accepts responsibility for the release forthwith, it is likely that Robert L. French will remain in violation of the CAO, EAR funds will need to be accessed, and the Site will no longer be eligible for UST Cleanup Fund grants.
47. Due to the recalcitrance of Robert L. French, the Regional Water Board has received funding authorization from the EAR account and, if Robert L. French does not come into compliance with the CAO forthwith, the Regional Water Board will be conducting work required by CAO No. R5-2006-0722. CWC section 13304(b)(1) states:
- "The regional board may expend available money to perform any cleanup, abatement , or remedial work required under the circumstances set forth in subdivision (a), including, but not limited to, supervision of cleanup and abatement activities that, in its judgment, is required by the magnitude of the endeavor or the urgency for prompt action to prevent substantial pollution, nuisance, or injury to any waters of the state. The action may be taken in default of, or in addition to, remedial work by the waste discharger or other persons, and regardless of whether injunctive relief is being sought."*
48. A \$250,000 Administrative Civil Liability is appropriate based upon the determinations in Findings 32, 42, 43, and 45, and in consideration of the factors delineated in CWC section 13327.
49. Issuance of this Administrative Civil Liability Order to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

50. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board to review this action. The State Water Board must receive the petition within thirty (30) days of issuance of this Order. Copies of the law and regulations applicable to filing petitions applicable to filing petitions will be provided upon request.

IT IS HEREBY ORDERED that the Discharger shall pay a civil liability of \$250,000 as follows:

Within 30 days of adoption of this Order, the Discharger shall pay two hundred fifty thousand dollars (\$250,000) by check made payable to the *State Water Pollution Cleanup and Abatement Account*. The check shall have written upon it the number of this ACL Order.

I, Pamela C. Creedon, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 11 September 2008.

(original signed)
PAMELA C. CREEDON, Executive Officer